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6 VS

7 **Defendant 1, Maplebear Inc/Instacart**

8 **Registered Agent in Massachusetts**

9 Cogency Global Inc.

10 45 School Street Suite 202

11 Boston, Ma 02108

12 **Principle Office Location**

13 50 Beale Street Suite 600

14 San Francisco, CA 94105

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16 **Defendant 2, Doordash, Inc**

17 **Registered Agent in Massachusetts**

18 Registered Agent Solutions, Inc.

19 44 School Street Suite 505

20 Boston, Ma 02108

21 **Principle Office Location**

22 303 2nd Street South Tower, Suite 800

23 San Francisco, Ca 94107

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Introduction

28 I, Pro Se Plaintiffs Jorge L. Alvarez seek compensation for the unlawful act of
29 unlawful employment practices in the state of Massachusetts.

30 “M.G.L.A. 151 § 1 § 1. Oppressive and unreasonable wages; validity of contracts
31 Effective: January 1, 2021 to Decetnber 31, 2021 Currentness It is hereby declared
32 to be against public policy for any employer to employ any person in an
33 occupation in this commonwealth at an oppressive and unreasonable wage as
34 defined in section two, and any contract, agreement or understanding for or in
35 relation to such employment shall be null and void. A wage of less than \$13.50
36 per hour, in any occupation, as defined in this chapter, shall conclusively be
37 presumed to be oppressive and unreasonable, wherever the term "minimum wage"
38 is used in this chapter, unless the commissioner has expressly approved or shall
39 expressly approve the establishment and payment of a lesser wage under the
40 provisions of sections seven and nine. Notwithstanding the provisions of this
41 section, in no case shall the minimum wage rate be less than \$.50 higher than the
42 effective federal minimum rate.”

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Parties

- 45 1. Pro Se Plaintiff, Jorge L. Alvarez resident of Springfield Massachusetts and
46 employee of Instacart and Doordash company.
47 2. Defendant, Instacart and Doordash.

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Statement of Facts

50 I, Jorge L Alvarez, am currently employed with both defendant Instacart and as of
51 approximately 9/6/21 I was hire with Doordash.

52 I'll begin with Instacart. Started working for Instacart since June 28, of 2021.
53 Instacart bases pay on shopper's star rating between 1-5 they claim is placed by
54 costumers, complaints, canceled batches. And then Instacart doesn't exactly make
55 clear what other factors do they use to base their pay offers to shoppers.

56 When I say pay offers, as a shopper opens the app, a list of available batches will
57 made listed. A batch or an order, may have 1,2 or 3 costumers order combined.

Each batch will then offer a pay such as \$10 for a batch example. Then if the batch states it has a tip, it will show that as well. From 0 tip, 0.01 cent tips to a few dollars or more.

Unfortunately, and unknown to many shoppers, the tips are not set and so if a batch for example states pays \$10, the app not the costumer changes the tip based on if an item was out of stock, replaced and if the costumer was refunded. At the end, a \$10 batch can easily turn out to be \$9 or \$7 which is the Instacart minimum payment.

While Instacart claims costumers are able to change tip amounts within 24 hours after receiving their order, some people place large tips to lure shoppers to take their order to then cut the tips at the end after groceries are delivered as seen in this news report, <https://www.cnn.com/2020/04/09/tech/instacart-shoppers-tip-baiting/index.html>, Instacart does their own version of luring and then cutting tips on their employees.

Interestingly, some costumers have offered to give me cash because they weren't given a tip option or so they stated to me.

The current minimum wage for the state of Massachusetts is \$13.50. I have taken a number of screenshot pictures showing batches containing multiple costumers paying from \$7 and almost always under \$13 for batches that take in excess of an hour to nearing 2 hours of work, while using our own vehicles to do the work for the company.

So, here, Instacart is committing an unlawful act in the state of Massachusetts by paying well below the minimum wage as set by Massachusetts laws. And as stated for tipped employees **Mass. General Laws c.149 § 152A**.

Please see <https://www.mass.gov/info-details/mass-general-laws-c149-ss-152a>

Instacart also falls into violating section B. "No employer or other person shall demand, request or accept from any wait staff employee, service employee, or service bartender any payment or **deduction from a tip** or service charge given to such wait staff employee, service employee, or service bartender by a patron. No such **employer or other person** shall **retain** or distribute in a manner inconsistent with this section any tip or service charge given directly to the employer or person."

90 And I suspect they are also in violation of section C. As batches are offered in a
91 pool type listing at different rates to shoppers for the same batch.

92 Section C, "No employer or person shall cause, require or permit any wait staff
93 employee, service employee, or service bartender to participate in a tip pool
94 through which such employee remits any wage, tip or service charge, or any
95 portion thereof, for distribution to any person who is not a wait staff employee,
96 service employee, or service bartender. An employer may administer a valid tip
97 pool and may keep a record of the amounts received for bookkeeping or tax
98 reporting purposes."

99 Instacart is also in violation of section D and E, "D-If an employer or person
100 submits a bill, invoice or charge to a patron or other person that imposes a service
101 charge or tip, the total proceeds of that service charge or tip shall be remitted
102 only to the wait staff employees, service employees, or service bartenders in
103 proportion to the service provided by those employees.

104 Nothing in this section shall prohibit an employer from imposing on a patron any
105 house or administrative fee in addition to or instead of a service charge or tip, if
106 the employer provides a designation or written description of that house or
107 administrative fee, which informs the patron that the fee does not represent a tip
108 or service charge for wait staff employees, service employees, or service
109 bartenders.

110 E- Any service charge or tip remitted by a patron or person to an employer shall
111 be paid to the wait staff employee, service employee, or service bartender by the
112 end of the same business day, and in no case later than the time set forth for
113 timely payment of wages under section 148."

114 As Instacart without warning to the employee deducts tip amount after groceries
115 are done.

116 And ultimately, Instacart cannot exempt itself from these laws and are to face the
117 penalties as stated by the law. Section F and G, "F- Whoever violates this section
118 shall be subject to all of the civil and criminal penalties and remedies set forth in
119 section 27C. Any person or employer who violates this section shall make
120 restitution for any tips accepted, distributed or retained in violation of this
121 section, together with interest thereon at the rate of 12 per cent per annum. An

employee claiming to be aggrieved by a violation of this section may proceed pursuant to the second paragraph of section 150. The attorney general or, under said section 150, an employee may bring an action under this section within 3 years of any violation of this section.

G- No employer or person shall by a special contract with an employee or by any other means exempt itself from this section.”

Instacart acts of not just paying below minimum wage, but its further act of wage impermissible wage deduction violates my legal protective rights. And are actively taking advantage of and abusing those who are of a disadvantage group.

Meaning, as I have been shopping and ran into other shoppers, most are adults with some level of disabilities that didn’t qualify them for disability benefits, but are still unable to properly hold a regular job. Others have been noticeable substance users. I myself am a disable adult, unable to hold a regular job due to my disability. But my disability doesn’t automatically make me dumb. I am aware when I am being used and abuse.

Instacart is being very discriminatory and abusive to legally protected groups of disadvantage individuals.

My other complain on Instacart is their misclassification of its employees as independent contractors. This is simply false, all 3 of the following must be true for a person performing services in Massachusetts to be a valid independent contractor.

A. You are free from control and direction in connection with the performance of your work, both under any contract and in the reality of your job; and

B. Your work is performed outside the usual course of the business of your employer (this is the key one, contractors who perform the normal work of the business are almost always employees); and,

C. You are customarily engaged in an independently established trade, occupation, profession or business of the same nature as the work you so in your job.

154 The burden of proving otherwise falls on Instacart and Doordash. Keep in mind
 155 you are instructed and even kept on a time clock when doing a job and are
 156 directed to what store to go to. You are instructed on what items to replace out
 157 of stock items, call costumers before checking out and so forth. At no real time
 158 are you an independent contract setting any real negotiations and terms for the
 159 jobs being done.

160 What is true, is that the employee is taking most of the loses and overhead cost
 161 for the corporation. Vehicles wear and tear, gas, food on the road, maintenance,
 162 ones health, pretty much every negative is put on the employee while the
 163 employer reaps all the benefits with little to no cost to them. Even real
 164 contractors like tractor trailer owner operators get fuel reimbursement benefits
 165 along with other contract negotiations. With these app, the people are NOT
 166 independent contractors by any means and are nothing more but employees that
 167 are being heavily used and abused by these corporations.

168 In addition, the defendants also fail at the law when it comes to the tax
 169 withholding requirements of an employee.

170 “An **employee** is anyone who performs services for another person or
 171 organization under the direction and control of that person or organization. The
 172 employer-employee relationship exists when the person for whom services are
 173 performed has the right to control and direct the details and manner in which the
 174 job is to be accomplished.” As stated on the Massachusetts state website link,
 175 [https://www.mass.gov/guides/withholding-taxes-on-](https://www.mass.gov/guides/withholding-taxes-on-wages#:~:text=updates%20from%20DOR-,Withholding%20Requirements,or%20electronic%20return%2C%20on%20time.)
 176 [wages#:~:text=updates%20from%20DOR.-](https://www.mass.gov/guides/withholding-taxes-on-wages#:~:text=updates%20from%20DOR-,Withholding%20Requirements,or%20electronic%20return%2C%20on%20time.)
 177 [,Withholding%20Requirements,or%20electronic%20return%2C%20on%20time.](https://www.mass.gov/guides/withholding-taxes-on-wages#:~:text=updates%20from%20DOR-,Withholding%20Requirements,or%20electronic%20return%2C%20on%20time.)

178 Also, Instacart had settle a lawsuit *Groves et al. v. Maplebear, Inc. d/b/a Instacart*

179 Case No. BC695401, for misclassifying its employees and wage violations in
 180 California, and now, they are doing the same here in Massachusetts. “**Case**
 181 **Summary:**

182 Maplebear, Inc., which does business as Instacart, is settling a class action for just
 183 under \$11 million. The complaint alleged that Instacart violated federal and
 184 California labor laws in a number of ways, by misclassifying employees as
 185 independent contractors, not reimbursing their business expenses, not paying

wages and overtime, not providing meal and rest breaks, not providing accurate records of hours and pay, requiring false time statements, and improperly pooling tips, among other things.”

These same things have been made evident to me while working for Instacart here in Massachusetts.

Doordash, at finishing my hiring process and unlocking the app to begin work, I saw pays for work as low as \$3! An utter disregard for the law in every possible way imaginable.

Count 1 Instacart & Doordash

Violation of M.G.L.A. 151 § 1

§ 1. Oppressive and unreasonable wages; validity of contracts

Count 2 Instacart & Doordash

Violation of MGL 151B

Count 3 Instacart

Failed to Honor settled lawsuit *Groves et al. v. Maplebear, Inc. d/b/a Instacart*

Count 4 Instacart & Doordash

Unfair, unreasonable, deceptive and abusively advantageous employment practices

Count 5 Instacart & Doordash

Fraudulent tax practices/Failure to withhold required taxes from payments from employees

Count 6 Instacart & Doordash

Failure to provide reimbursements, such as to fuel, insurance, maintenance.

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Prayer for Relief

In keeping with the present standards set by the courts in the Haddad vs Walmart, and because of the defendant's blatant disregard and gross negligence to the employment laws of Massachusetts, I seek a relief of 2 million dollars from each defendant, making this a 4-million-dollar lawsuit in hope to serve as a serious deterrent to the defendants who are regarded as giants in the tech platforms, from their discriminatory, abusive, oppressive and unreasonable employment actions.

Sincerely ProSe Plaintiff, Jorge L Alvarez

Date 09/14/2021

